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BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER RENDON, CHRISTIAN E	
			ART UNIT	PAPER NUMBER
			3714	
			NOTIFICATION DATE	DELIVERY MODE
			01/28/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
glenda.orrantia@bakerbotts.com

## Office Action Summary

Application No.

10/667,923

Applicant(s)

AMAITIS ET AL.

Examiner

Christian E. Rendón

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Amendment*

This office action is in response to the amendment filed on 11/30/07 in which applicant responds to the previous claim rejections. Claims 1-52 are still pending.

### *Claim Rejections - 35 USC § 102*

**Claims 1-4, 6-13, 15-17 and 19-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Simon (US 7,172,508 B2).**

1. Simon discloses a pari-mutuel betting game (PBG) that allows a group of players to place bets on a live sporting event (abstract). The size and location of the group of players can be either small and reside in a local setting like a sports bar or a house, as well as larger and a game session over the Internet (col. 9, lines 62-64). The invention regards the term 'sporting event' as either a short-term experience like single game or match (col. 10, line 4) or a longer-term experience like a sports league, a tournament or a multi-game series (col. 10, lines 8-11). The purpose of the invention is to extend pari-mutuel wagering from the typical simple betting line to a hierarchical or tree structure betting line system (col. 10, lines 21-28). In other words, a player can place a bet on a batter to 'strike out' (Fig. 8A, 2001, 'Out') or not (Fig. 8A, 2001, 'Safe'). Next the player can place another bet on the details of the first outcome, if the batter is 'out' as the results of a 'strike out', 'fly ball out', or 'ground ball out' (Fig. 8A, 2002, left tree branch, level 2). If the player believes the batter will 'strike out', another betting opportunity opens up allowing the player to wager if the batter will 'swing and miss' or mistake the pitches for 'a ball' (Fig. 8A, 2003, left tree branch, level 3). The results of a PBG are based on a live game therefore before a game begins only certain betting lines are open and are closed by an administrator (abstract) when the game begins. Depending on the sport and the number of possible betting events a new betting lines could appear every minute or so (col. 14, lines 46-49), allowing players to wager on how the game is evolving (col. 2, lines 14-15). Therefore a PBG uses an

Open-Close-Terminate Sequence to provide multiple betting lines for each betting event (col. 6, lines 4-8). Furthermore, the administrator of the PBG monitors the live game for situations that give rise to betting events and decides to open a betting line with a bonus for that event (col. 7, lines 11-21).

2. Regarding claims 1 and 17, the disclosed invention is a system offering first and second level or type of bets on a plurality of events or persons. The conditions of the event: who, how long, how much, how many, etc. are decided by the administrator of the PBG (col. 7, lines 11-21). In other words betting lines that require a player to guess the total number of units earned are offered. The betting lines could ask the player to guess if a batter will hit a 'single', 'double', 'tripe' or a 'home run' (Fig. 8A, 2002-2003) or if a football team's next score entails a 'field goal', 'safety' or 'touchdown' (col. 16, 26-28). Once again the only limit to the betting lines and its conditions is an administrator's imagination (col. 6, lines 21-22). Furthermore the example betting lines offer players a range of condition or numbers to place a wager on that if properly guessed rewards the player a payout from a pari-mutuel betting pool (col. 5, lines 62).

3. The Office feels it is necessary to state that the vague claim language also allows for a person to interrupt a first and second type of bet more broadly then stated above. The disclosed system allows a player to wager on multiple and different betting events or hierarchical trees that are related to the same game or series of games. For example, a player is allowed to place a wager on how a football team's next 'drive' will terminate (col. 16, lines 2-5) while simultaneously having a wager placed on how many touchdowns will be scored in the quarter (col. 16, lines 40-43) and a wager on who will win the game (col. 15, line 42).

4. Regarding claims 2-4, 9, 11, 22 and 24, the invention discloses horse and automobile races as a possible sporting event a group of players could place bets on using the disclosed system (col. 18, lines 5-27). Therefore the invention inherently incorporates placing wagers on a jockey or driver and all of the rules and terms of both types of races. Furthermore, the system offers betting events like:

win, place and show that are considered 'conventional' lines that requires a player to guess the finishing positions of the horses in a race. When a player chooses 'win' the horse must come in first, 'place' requires the horse to come in first or second, and 'show' requires the horse to finish in one of the top three spots. Each winning position rewards the horse a different prize amount therefore the system can offer a wagering event based on the prize amount or purse as the second hierarchical level of a betting line.

5. Regarding claims 6-8 and 19-21, depending on the current betting lines the invention can allow a player to place a third level or type of bet as disclosed by the baseball batter example (Fig. 8A). The invention places no limits on how many levels a hierarchical betting line contains and states that it is based "whether the game situation changes enough so that the odds on the choices are significantly different than they were for the previous line" (col. 3, lines 4-7). Therefore a forth or 'X' number of levels or type of bets is inherently incorporated in the invention. In terms of the broader interpretation, the invention allows a player to place a wager on three or four non-hierarchical betting lines as soon in the football example: 'drive', 'next score', 'quarter TDs' and 'winner' (col. 15, lines 37-41). By placing a wager on the 'next score', a player is guessing on an index number that will hopefully represent the total number of units earned.

6. Regarding claim 10 and 23, the art discloses defining a sporting event as a tournaments (col. 10, lines 8-11) and soccer as one of the many type of sports the system can be applied too (col. 17, line 63). Therefore the art inherently incorporates the point structure of the FIFA World Cup tournament and allows for an administrator to create betting events and lines using the tournament rules; won matches are awarded three points and tie matches are worth one point. Furthermore, this claim limitation is also applied towards the possibility of a horse achieve a win, place or show in a race as described previously.

7. Regarding claims 12-13 and 25-26, Simon discloses the intentions of applying PBG to non-traditional sporting events like the gain and losses on a stock market to the system (col. 10, lines 12-15). Therefore the hierarchical betting line would entail betting that a stock would increase in value in a 'X' number of days and second level bet would ask how much of a gain is predicted.

8. Regarding claim 15-16, the invention regards the term 'sporting event' as either a short-term experience like single game or match (col. 10, line 4) or a longer-term experience like a sports league, a tournament or a multi-game series (col. 10, lines 8-11).

***Claim Rejections - 35 USC § 103***

**Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (7,172,508 B2).**

9. The above description of the invention disclosed by Simon and the limitations they pertain is considered within this art rejection as well. Simon recognizes that live games are in a state of flux (col. 2, lines 12-13) and consequences of a previous situation can create new betting lines (col. 3, lines 4-7). Therefore the constant flow of new information is either maximized by an experienced player who waits (col. 14, lines 49-51) or overwhelms a beginner causing them to change their mind, but still the end result is rewarding the players who guessed correctly early in a betting event (col. 2, lines 12-16). Even though Simon mentions that the flow of information can change a player's mind on a decision that he/she had or will make on a wager, Simon is silent about allowing a player to cancel a wager after one or more events have occurred. It would have been obvious to one of ordinary skill to allow a player to cancel their bets for the following reason. The system offers an significant amount of information on each open betting line and some of these lines remain open for a series of games therefore it is only logical to allow a player the opportunity to back out of a wager that will take a long time to reach an outcome when the player has lost faith in their choice. Furthermore it is only logical for the system to return only a portion of the player's money since some of the events or games were

already played and another portion as a form of punishment for backing out of the bet and decreasing the betting pool for that particular line.

**Claims 5, 18, 28-34, 37-45 and 48-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 7,172,508 B2) in view of Friedman (US 6,126,543).**

10. The above description of the invention disclosed by Simon and the limitations they pertain is considered within this art rejection as well. Simon describes the state of the art by disclosing several patented inventions. The patent awarded to Friedman is for a method for wagering on multiple sporting events. The invention disclosed by Friedman allows players to place combined point spread wagers with over/under numbers on two or more events (col. 5, lines 31-46). Even though Simon states the disclosed invention as superior to the prior art (col. 5, lines 47-49), the rest of the art remains silent about point spread and over/under betting.

11. Regarding claims 5, 18, 28 and 42, Friedman discloses a pari-mutuel wagering system that allows for exotic type of bets (Friedman: abstract), point spread and over/under bets (Friedman: fig 5a; 36, 44). The art defines an over/under bet on the total amount of points the two teams will score (Friedman: col. 1, lines 66-67). The total or final score is called the index and a bettor can wager if a team will exceed or go under the index (Friedman: col. 2, 1-6). These type of bets: exotic, point spread and over/under are well known in the art of sports gambling and it would have been obvious to one of ordinary skill to include them and other elements disclosed by Friedman into Simon's invention as further improving a system of conducting a sport game and wagering over a computer network (Simon: col. 5, lines 47-49).

12. Regarding claims 29 and 43, the system disclosed by Simon has a pari-mutuel payoff (Simon: col. 5, line 62), in other words the winners of the event divide the total amount bet or betting pool on the event (Simon: col. 1, lines 12-15).

13. Regarding claim 30-32, these claim limitations were discussed above in the rejection of claims 2-4 respectively; please see above for further detail.

14. Regarding claims 33 and 44, in the invention disclosed by Simon a new betting lines could appear every minute or so (col. 14, lines 46-49) depending on the sport and the number of possible betting events. Therefore Simon teaches receiving one or more additional bets after one or more of the plurality of events has occurred.

15. Regarding claims 34 and 45, this claim limitation was discussed in the rejection of claim 13; please see above for further detail.

16. Regarding claims 35-36 and 46-47, this claim limitation was discussed in the rejection of claim 14; please see above for further detail.

17. Regarding claims 37-38 and 48-49, this claim limitation was discussed in the rejection of claim 15-16 respectively; please see above for further detail.

18. Regarding claims 39-41 and 50-52, Simon teaches placing wagers on multiple hierarchical bets. For example a player can place a wager on several of the possible outcomes of a bettor at bat (Simon: fig. 8A) and another wager on how a 'drive' will be achieved (Simon: fig. 6, 518).

Furthermore, both arts teach placing wagers on a plurality of events, Simon defines an event as a short-term or long-term competition (col. 10, lines 4-11) and Friedman clearly states the invention as a method for wagering on multiple sporting events (Friedman: abstract). Therefore Simon teaches placing a first bet on the number of units earned in a subset of the plurality of events or games or possible outcomes; as well as a second bet regarding a total units earned in the plurality of events or games or possible outcomes. Furthermore, Friedman teaches the players wagering over/under bets and the art combination of Simon and Friedman would teach allowing the placing of an over/under bets on any of the possible bets. Hence any wagers that become winning bets are paid from a betting pool of each bet (Simon: col. 1, lines 13-28).



***Response to Arguments***

19. Applicant's arguments filed 11/30/07 have been fully considered but they are not persuasive. The applicant claims the base reference fails to teach making a several different type of bets. As stated above, Simon discloses a hierarchical or tree structure betting line system (col. 10, lines 21-28) that allows a player to place several bets on different possible situations that can occur in a game. The baseball and football examples were describe as a means to better explain the similarities of the art and the applicant's limitations. Furthermore, a "first range of numbers" or choices is disclosed by the reference as stated above as well. The reference describes the administrator's power to define the betting conditions of an event by listing the possible outcome of a field goal kick (Simon: col. 16, lines 25-30):

* Team 1 touchdown	* Team 1 field goal	* Team 1 safety	* No scoring
* Team 2 touchdown	* Team 2 field goal	* Team 2 safety	

This example specifically teaches a range of numbers or choices, however if the applicant would like to argue that these choices cannot be substituted for numbers the art also provides a 'number' example. The administrator is also able to create betting lines that ask 'how many touchdowns will be scored in a quarter' (Simon: col. 16, lines 40-44):

* none	* one	* two
* three	* four	* more than four

Therefore the reference teaches the placement of a bet on a total number of earned 'units' that fall within a range of numbers. The Examiner disagrees with the applicant's belief that the prior art fails to teach the positioning of a participant in a plurality of events. When the art teaches placing bets on longer-term sporting events: a sports league, a tournament or a multi-game series (Simon: col. 10, lines 8-11) and placing a bet on who wins a tournament is placing a bet on who wins 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc. place or position. The Examiner disagrees with the applicant's arguments towards the rejection of

claim 28. Friedman discloses an index as a final score and a bettor can wager if a team will exceed or go under the index (Friedman: col. 2, 1-6) and Simon discloses placing different type of bets on a plurality of events. Therefore the combination of the two would create a betting system that teaches a "participant (bettor's team) over the course of the plurality of events (a season) will exceed a particular index number (predicted final score) before the number of units earned by any other of the plurality of participants (opponent's final score per game) exceeds the particular index number (bettor's team winning by X number of points more then the predicted final score)". One final note, the placement of a bet on a plurality of horse races that are based on prize money is inherent to the Simon reference & is called the Triple Crown: Kentucky Derby, Preakness Stakes & Belmont Stakes.

#### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón  
Examiner  
Art Unit 3714

  
XUAN M. THAI  
SUPERVISORY PATENT EXAMINER